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receive no support even from the authorization of the state Constitution. He contends that a constitutional and legislative declaration, that an employer may be liable without fault imputable to him for injury to a workman in the course of his employment, is not referable to the police power, and he affirms that the rule making liability depend on fault, is an immutable principle of due process of law guaranteed by the Constitution of the United States. While the Justice does his own independent thinking in his able opinion, he approves and follows the discredited decision in the Ives case.⁹

W. C. J.

EQUITY: POWER TO STAY TEMPORARY INJUNCTION.—The United Railroads of San Francisco filed a verified complaint against the City and County of San Francisco, asking for a perpetual restraining order. After due notice and a full hearing, a temporary injunction was issued restraining the City and County of San Francisco from doing certain acts during the pendency of the action and until the final determination thereof. The case was re-assigned to another department of the same court, the original trial judge assenting. Then the defendant filed its answer and gave notice of a motion for an order staying the operation of the preliminary injunction. The grounds set forth all went to the question of the propriety of granting the injunction in the first instance. No new grounds for relief were set out. In *United Railroads of San Francisco v. The Superior Court*,¹ the plaintiff applied to the California Supreme Court for a writ of prohibition to prevent the Superior Court from hearing this motion for an order to stay the operation of the preliminary injunction. The writ was issued, that court stating that the Superior Court had no jurisdiction to interfere in any manner with the operation of the temporary injunction.

In so deciding, the Supreme Court of California has adhered to an interpretation of our statutes consistently followed by the courts. Under the Practice Act,² the provisions of which were of the same import as those of the code relating to provisional injunctions,³ it had been repeatedly held that the right to a temporary injunction is considered as adjudicated by hearing upon an order to show cause.⁴ The status pending a decision on the merits of the case was held to be finally and definitely determined if the temporary injunction were granted after notice and full hearing. Upon these decisions interpreting the Practice Act are based the decisions

⁹ Outlook (July 29, 1911), vol. 98, p. 709.

¹ (Aug. 5, 1915), 50 Cal. Dec. 211.

² Practice Act § 118.

³ Cal. Code Civ. Proc., §§ 525-532 inc.

⁴ *Natoma Water & Mining Co. v. Clarkin* (1860), 14 Cal. 544; *Hicks v. Michael* (1860), 15 Cal. 107; *Natoma Water & Mining Co. v. Parker* (1860), 16 Cal. 83.

which interpret the present code provisions.⁵ The opinions of the courts have been determined by the doctrine, firmly settled in this state, that an order or judgment regularly made in pursuance of plain statutory provision cannot be revoked, modified or otherwise disturbed, except as authorized by statute.⁶ The effect of the order staying the operation is to reverse, pro tanto, the judgment granting the injunction.⁷ The trial court has decided that the defendant be restrained until a trial on the merits. That conclusion, arrived at after proper notice and a hearing is reviewable only in the manner provided for by the code, by an appeal from the order granting the injunction.⁸ If the injunction had been granted *ex parte*, it could have been vacated or modified on motion.

The decision of the court in the principal case is probably sound under the interpretation given the California statutes. The result attained, however, places California quite alone in the attitude that it takes toward preliminary injunctions. The great weight of American authority holds that the granting, dissolution, or modification of temporary injunctions are matters within the sound discretion of the trial court.⁹ This permits a needed latitude in remedying mistakes and prevents injustice resulting from the error or mistake of judgment of the trial judge. In California, the trial court could not modify or disturb the temporary injunction granted after hearing unless the right to modify or dissolve has been reserved. It could not rectify any mistake of judgment which might lead to irreparable injury. The remedy for this anomalous condition is legislative. The courts can only follow the established interpretation of the code provisions.

M. D. S.

EVIDENCE: BOOKS OF ACCOUNT IN ACTIONS AGAINST ADMINISTRATORS.—The rule excluding a party to an action from being a witness is preserved in California in cases where a claim is made against the estate of a deceased person.¹ This is the only instance in which a party is now disqualified to testify. But in the days when a party was absolutely disqualified, an exception to the hearsay rule allowed the introduction of the party's account books. This

⁵ *Ots v. Superior Court of the City and County of San Francisco* (1909), 10 Cal. App. 168, 101 Pac. 431.

⁶ *Holtum v. Grief* (1904), 144 Cal. 524, 78 Pac. 11; *Carpenter et al. v. Superior Court of San Joaquin Co.* (1888), 75 Cal. 596.

⁷ *Hulbert v. California Portland Cement Co.* (1911), 161 Cal. 239, 118 Pac. 928.

⁸ Cal. Code Civ. Proc., §§ 939, 963.

⁹ *American Grain Separator Co. v. Twin City Separator Co.* (1912), 202 Fed. 202; *Massie v. Buck* (1904), 128 Fed. 27; *Martin v. Murphy* (1914), 216 Mass. 466, 103 N. E. 930; *Myer v. Town of Petersburg* (1905), 96 Minn. 314, 104 N. W. 899; 22 Cyc. 982, and cases cited note 58; High on Injunctions, § 1467.

¹ Cal. Code Civ. Proc. § 1880, subd. 3.